

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
DAVID GORDON WALLACE, JR.	§	Case No. 15-31594-H4-7
	§	(Chapter 7)
Debtor.	§	

**RESPONSE OF RECEIVER TO BIZRADIO NOTEHOLDERS’
EMERGENCY MOTION TO LIFT STAY TO SEEK RELIEF AND
CLARIFICATION OF JUDGE ATLAS’S ORDER APPROVING
SETTLEMENT AND ENTERING FINAL BAR ORDER
AND INJUNCTION IN FEDERAL DISTRICT COURT ACTION
(This pleading relates to Docket No. 40)**

Thomas L. Taylor, Court Appointed Receiver of Kaleta Capital Management, Inc. (the “Receiver”), a creditor and party in interest in this Chapter 7 case, files this response to the Emergency Motion to Lift Stay to Seek Relief and Clarification of Judge Atlas’s Order Approving Settlement and Entering Final Bar Order and Injection in Federal District Court Action (the “Stay Relief Motion”) filed by certain Business Radio Noteholders (the “Movants”).

Response and Reservation of Rights

1. The District Court has sole jurisdiction to consider any modification of that court’s Injunction/Bar Order (as defined below) pursuant to the Motion for Order Approving Proposed Settlement and For Ancillary Orders in the matter styled: *SEC v. Albert Fase Kaleta and Kaleta Capital Management, Inc. et. al*, 4:09-cv-03674, United States District Court for the Southern District of Texas, Houston Division (the “District Court”). With due respect to the Bankruptcy Court, the Receiver does not consent to the Bankruptcy Court interpreting the Injunction/Bar Order and submits that any relief from that order should be addressed solely to

the District Court.¹

2. The Movants litigated the propriety of the injunctive relief granted by the Injunction/Bar Order before the District Court, as well as through an appeal to the United States Court of Appeals of the Fifth Circuit. On February 7, 2012, the District Court entered its Memorandum and Order approving the Receiver's Settlement Motion. *See SEC v. Kaleta*, 2012 U.S. Dist. LEXIS 14880, 2012 WL 401069 (S.D. Tex. Feb. 7, 2012). On August 1, 2012, the District Court entered its Order Approving Settlement and Entering Final Bar Order and Injunction (Docket No. 210) (the "Injunction/Bar Order"). On June 19, 2013, the United States Court of Appeals for the Fifth Circuit entered a Per Curium Order affirming the District Court's approval of the Injunction/Bar Order. *See SEC v. Kaleta*, 530 Fed. Appx. 360 (5th Cir. 2013).

3. Although the Receiver opposes modification of the Injunction/Bar Order, the Receiver does not oppose relief from the automatic stay imposed in this Chapter 7 case to permit the Movants to address any modification or interpretation of the Injunction/Bar Order to the District Court, as that is the proper tribunal to interpret or modify the Injunction/Bar Order.

4. The Receiver reserves all rights with respect to the interposing objections in the SEC Receivership Action to the modification of the Injunction/Bar Order or such other relief that may be appropriate with respect to the Compromise Settlement that underlies the Injunction/Bar Order or the Movants' rights in the SEC Receivership Action.

¹ Indeed, the Injunction/Bar Order expressly states the "*Court shall have and retain jurisdiction over all matters related to the administration, interpretation, effectuation, or enforcement of this Order, the Compromise Settlement and Release Agreement between the Wallace Bajjali Parties and the Receiver, and any related disputes.*" See Injunction/Bar Order at 4.

DATED: June 5, 2015.

Respectfully submitted,

WINSTEAD PC
1100 JPMorgan Chase Tower
600 Travis Street
Houston, Texas 77002
(713) 650-8400
(713) 650-2400 (Facsimile)

By: /s/Joseph G. Epstein
Joseph G. Epstein
State Bar No. 06639320
Southern District No. 11733
Sean B. Davis
Texas Bar No. 24069583
S.D. Tex. No. 1048341

**ATTORNEYS FOR THOMAS L. TAYLOR,
COURT APPOINTED RECEIVER OF
KALETA CAPITAL MANAGEMENT, INC.**

CERTIFICATE OF CONFERENCE

I hereby certify that on June 4 and 5, 2015, I conferred with counsel for the Movants and counsel for the Chapter 7 Trustee with respect to the relief sought in the Stay Relief Motion and the Receiver's position and reservation of rights.

/s/Joseph G. Epstein
Joseph G. Epstein

CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2015, a true and correct copy of the foregoing Notice of Appearance was electronically mailed to the parties that are registered or otherwise entitled to receive electronic notices in this case pursuant to the Electronic Filing Procedures in this District.

/s/Joseph G. Epstein
One of Counsel